

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company       )  
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  )       **D.T.E. 01-107**

**INITIAL BRIEF OF THE  
MASSACHUSETTS DIVISION OF ENERGY RESOURCES**

Carol R. Wasserman  
Deputy General Counsel  
Division of Energy Resources  
70 Franklin Street, 7<sup>th</sup> Floor  
Boston, MA 02110

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On October 23, 2000, the Bay State Gas Company (“Bay State”) filed with the Department of Telecommunications and Energy (the “Department”) its tariffs implementing the Model Terms and Conditions for Default Service, in accordance with D.T.E. 00-12. The Department approved the Terms and Conditions effective November 1, 2000.

On December 19, 2001, Bay State submitted a Petition seeking Department approval to update its Terms and Conditions (the “Petition” or “BS Ex. 1”) to include:

- (1) a telemetering device and installation fee of \$ 1,400 for instrumented meters and \$ 475 for non-instrumented meters, and a \$ 6.50 monthly maintenance fee, to be paid by customers,<sup>1</sup>
- (2) a \$0.60 fee/bill/month, to be billed to suppliers, for Standard Passthrough Billing Service,
- (3) a \$ 1.50 fee/bill/month, to be billed to suppliers, for Standard Complete Billing Service,
- (4) a \$0.10 fee/customer/month, to be billed to suppliers, for General Pool Administration, and
- (5) a \$ 10 fee per switch for Customer Switching, applied to suppliers taking a customer from another supplier’s pool or moving a customer from one of its pools to another.

The Department conducted a Public Hearing on February 11, 2002 and convened a Technical Conference on February 22, 2002. The matter was docketed as D.T.E 01-107.

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<sup>1</sup> Bay State characterized the telemetering fees as already approved by the Department and stated that, “[t]he Company is taking this opportunity to inform the Department of its telemetering fees for Daily Metered Service. Pursuant to Section 11.5.1 of the Company’s T & Cs, Bay State already has the authority to charge these fees.” Petition, at 2. At the hearing, it became clear that Department wished to inquire into the basis for these fees as well as the proposed supplier fees.

On February 1, 2002, the Massachusetts Division of Energy Resources (“DOER”) filed a timely Motion to Intervene, which was granted. A Petition to Intervene Late was filed by AllEnergy Gas & Electric Marketing Company, L.L.C. on February 14, 2002 and was granted on February 20, 2002.

The Department conducted an evidentiary hearing on April 11, 2002. In support of its filing, Bay State sponsored the testimony of Ronald J. Slate, Bay State’s Manager of Transportation Service, Richard M. Sasdi, Bay State’s Director of Customer Operations, and Joseph A. Ferro, Bay State’s Manager for pricing and ratemaking. (Tr. at 6 – 7)

## **II. SUMMARY OF DOER POSITION**

The Department should deny Bay State’s Petition in this proceeding. First, DOER believes that the evidence presented failed to support Bay State’s claims as to the propriety and fairness of the proposed fees and fell far short of proving the proposed fees to be just and reasonable. Second, Bay State’s control over customer information and metering instrumentation works a distinct inequity upon competitive suppliers, giving Bay State an anti-competitive advantage. Third, this proceeding clearly demonstrates the problem inherent to single issue rate cases; the very narrow scope of the proceeding makes it impossible to assess the proposed fees within any meaningful context.

Finally, all of the local distribution companies have reserved a place in their Terms and Conditions for supplier fees; this issue clearly affects the entire community of utilities and suppliers.<sup>2</sup> The Department should open a Generic Inquiry into the issue of supplier fees, in

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<sup>2</sup> No other local distribution company in Massachusetts has proposed supplier fees.

order to allow for full participation of all affected parties and to obtain the benefit of input from the marketplace and the public as a whole.<sup>3</sup>

Alternatively, the Department should deny Bay State's Petition in this docket, but reserve the issue for review when Bay State becomes eligible to file a base rate proceeding in 2004.

### **III. ARGUMENT**

#### **A. Bay State's Proposed Fees Are Not Just and Reasonable**

Bay State, as the party initiating a change in its Terms and Conditions, had the burden of demonstrating that the proposed fees were just and reasonable, a burden Bay State failed to meet.<sup>4</sup> The evidence presented fell far short of any showing that could be described as just and reasonable.<sup>5</sup>

The evidence Bay State presented consisted of historical anecdotes drawn from its Pioneer Valley Pilot Program (the "Pilot Program"), the personal conjecture of three Bay State employees,, and repeated references to "corporate policy." A review of the evidence presented to support each proposed fee clearly demonstrates the dearth of credible information provided to justify the proposed fees.

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<sup>3</sup> The Department initiated a Generic Inquiry; D.T.E. 01-28 (Phase I and II); to develop information from all interested parties concerning metering and billing for the electric companies.

<sup>4</sup> "Ordinarily, the complaining party seeking a change in the existing rates does carry the burden of proving new rates." Fryer v. Department of Public Utilities, 375 Mass. 685, 690 (1978).

<sup>5</sup> Bay State's Petition describes the proposed fees as generally cost-based, fair, and appropriate. While Bay State is well within its rights to characterize the filing in any way it chooses, the legal standard remains "just and reasonable."

Telemetering Fees. Bay State proposes to charge customers \$ 1,026 for the purchase of an instrumented meter, \$ 221 for a non-instrumented meter, \$ 145 for installation, miscellaneous fees for parts, and \$ 6.00/month for maintenance. D.T.E. Information Request 1-4. These amounts, according to Bay State's witnesses, are based on the wholesale costs of the devices plus the cost of storage, the "corporate markup policy" amount added to each device, and the corporate average derived for time spent on installations and maintenance. (Tr. at 17).

As set forth in the response to D.T.E. 1-4, the corporate markup policy raises the price of an instrumented meter from \$ 570 to \$ 1026 and raises the price of a non-instrumented meter from \$ 85 to \$ 221. The proportional price increases for AMD covers and miscellaneous parts are even greater; from \$ 45 to \$ 117 and from \$ 46 to \$ 121.30, respectively.

When asked to provide the basis for the adders prescribed by the corporate markup policy, Mr. Ferro could not do so. He responded that the corporate markup policy was "the corporate markup policy" and "it applies to materials the company installs on a regular basis."<sup>6</sup> (Tr. at 17). When asked whether the corporate markup policy was reduced to writing, Mr. Ferro replied that he "had not seen a document on the markup policy" even though it is a routine Bay State practice to apply it. (Tr. at 17). In response to DOER Record Request 1; seeking all materials regarding Bay State's corporate markup policy, including any materials

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<sup>6</sup> The application of the policy is of interest here, in light of Bay State's assertion, on page 2 of the Petition, that Bay State has not enrolled any new Daily Metered Service customers since November 1, 2000. This could hardly be characterized as something Bay State installs on a "regular basis."

relating to development of the policy or basis for the policy, Bay State provided one piece of paper, dated November 17, 1997, entitled “Current Price Mark Up Policy,” issued by the Purchasing Department to warehouse personnel. The piece of paper identified percentage increases based upon costs from \$ 0 to \$ 250. There were no further documents and no explanation for the percentage increases.

While it strains credibility to refer to a memo issued by the Purchasing Department to warehouse personnel as a “corporate policy,” to propose Telemetering Fees without any quantitative basis is unsupportable. The derivation of installation costs was similarly unsupported, being based solely upon anecdotal testimony. (Tr. at 20).

Furthermore, it also became clear during the hearing that Bay State did not know to what extent the proposed Telemetering Fees have already been accounted for in base rates.<sup>7</sup> Mr. Ferro testified that labor and service costs would have been included in rate base, at least to some extent, and that at least a few of the Metscan meters would have similarly been included. (Tr. at 21 – 22).

While Bay State did include Telemetering Fees at Section 11.5.1; Daily Metered Distribution Service; of its Terms and Conditions, the amounts to be charged require the Department’s review and approval. The evidence presented does not provide an explanation

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<sup>7</sup> Bay State responded to D.T.E. 1-4 using costs and labor rates based upon 1999 information. Updated information concerning these costs was higher than the 1999 figures. When asked if Bay State was suffering a revenue shortfall necessitating the fees, the response was “yes.” However, when it was pointed out that Bay State would continue to suffer a shortfall if the 1999 figures were used, Bay State witnesses could not say if Bay State would revise the figures to eliminate the shortfall. (Tr. at 56).

for the amount of these proposed fees and fails to demonstrate that the proposed fees are just and reasonable.

Standard Passthrough Billing Service Fees. Bay State proposes a fee of \$0.60/bill/month, to be paid by suppliers, to “[p]rovide an electronic file for the Supplier that will contain the Customer’s usage being billed including the current and previous meter readings.” (BS Ex. 1 at 2 – 3). Bay State asserts that the proposed fee reflects only actual costs incurred by Bay State to provide this information. The assertion is based upon Bay State’s “historic experience and cost structure.” (BS Ex. 1 at 3). Bay State’s response to D.T.E. Information Request 1-10 pointedly emphasized that the Standard Passthrough Billing Service Fee was “entirely based on incremental costs Bay State has incurred, and will continue to incur, to support these services.”

In response to D.T.E. Information Request 1-15/DOER Information Request 1-6, Bay State asserted that the Information System (“IS”) time required for the Standard Passthrough Billing Service, an incremental cost, amounted to 600 hours, on average, at a cost of \$ 75/hour. The \$ 75/hour rate was established by Nisource and “the Company [Bay State] is subject to this established Nisource corporate rate along with the other companies in the Nisource organization.” (DOER 1-6).

When asked at the hearing whether Bay State had done any research to compare the Nisource cost for IS services against that of an outside provider, Mr. Ferro replied that no research had been done. (Tr. at 45). When asked whether Bay State was precluded from employing an outside provider by Nisource, Mr. Ferro stated that Bay State was in fact



precluded from using an outside source.<sup>8</sup> Bay State's response to DOER Information Request 1-6 also stated, in support of the estimated incremental costs, that the costs reflected the consolidation of Bay State's IS activities with those of its subsidiary, Northern Utilities. Bay State claimed that the consolidation "can only serve to reduce unit costs due to any gains in economies of scale." When asked to quantify any actual gains made, Mr. Ferro was unable to do so. (Tr. at 44). Mr. Ferro also testified that overall, information system costs, which included billing and usage data, had been included in Bay State's base rates in 1992 and that he was unable to separately quantify incremental costs incurred for Standard Passthrough Billing Services. (Tr. at 41 – 42).<sup>9</sup> The testimony raises significant questions as to collecting twice for the same costs of doing business.

The evidence presented by Bay State does not support the Petition for Standard Passthrough Billing Service Fees.

Standard Complete Billing Service Fees. Bay State proposes \$ 1.50/bill/month for supplying this service, for which customers would receive a single bill, prepared by Bay State, for both Distribution Service and Supplier Service. Bay State claims that this fee reflects the costs already calculated for Standard Passthrough Billing Service; \$ 1.21 (\$ 0.60 general maintenance and \$ 0.61 discussed above for IS); plus an additional \$ 0.29. This \$ 0.29 represents Bay State's estimate for "adding a line item for supplier commodity to BSG's bill,

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<sup>8</sup> While Ms. Ladd, counsel for Bay State, did interject her own response concerning Bay State's preclusion, she also correctly identified that she was not allowed to testify and she allowed Mr. Ferro to continue. (Tr. at 44).

<sup>9</sup> It should be noted that, when asked whether Bay State could quantify these costs in a manner that reflected the actual allocation between Bay State customers and Northern Utilities customers, Mr. Ferro responded that Bay State had not fully allocated those costs. (Tr. at 47).

which it would be sending to the customer anyway under the required Standard Passthrough Billing Service." (BS Ex. 1 at App. A. 3).

Bay State also characterized the costs for Standard Complete Billing Service as both incremental and market-based. The response to DOER Information Request 1 – 8 states that \$ 1.25 of the cost was incremental, based on Bay State's experience with the Pilot Program. However, the testimony elicited at the hearing and the records produced following the hearing contradict this assertion. According to Mr. Ferro, Bay State maintained no record of these incremental costs and had no method to track them. (Tr. at 48). In response to D.T.E. Record Request 2, Bay State produced seven lengthy reports about the Pilot Program, but not one of them quantified the costs Bay State claims to justify the proposed fee, or provided any insight into incremental costs incurred. The evidence on this point amounts to Mr. Ferro's statement that, "Those costs that we just discussed on DOER 1-6 and 7, those are what we call real costs. We've been experiencing them and will continue to experience them." (Tr. at 47 – 48).

The evidence was similarly sparse and contradictory on the \$ 0.50 identified to be market-based. Bay State's response to D.T.E. Information Request 1 – 12 states that "market-based" means "a charge representative of what other billing service providers would charge for the same service." However, when asked at the hearing whether Bay State had made inquiry of other billing service providers to establish a market-based cost, Mr. Ferro testified that Bay State had not made such inquiries. (Tr. at 114). Mr. Slate also testified that

because Bay State was the only source for this service, it did not need to make other inquiries. (Tr. at 114).<sup>10</sup>

General Pool Administration Service Fee. Bay State proposes a fee of \$ 0.10/customer/month, to be paid by suppliers for each Aggregation Pool, based on an estimate of IS costs. While the amount appears small, multiplying 3,729,663 bills/year by \$0.10<sup>11</sup> is not insignificant; amounting to \$ 372,966.30; particularly where Bay State could not demonstrate why these costs were not already addressed in base rates as part of ongoing operations and maintenance and could not explain how this proposed fee compared to industry standards. (Response to D.T.E. Information Request 1 – 17(b)).

Customer Switching Service Fee. Bay State proposes to charge suppliers \$ 10/customer/switch. The justification proffered by Bay State for this fee is the unique account maintenance costs incurred and the deterrent effect of the fee on slamming. However, in so stating, Bay State also observes that the fee is not really incremental; it offers the conjecture that, “there is undoubtedly a certain level of backroom billing support needed to accurately process these transactions.” (BS Ex. 1 at 4). The testimony also revealed that “We [Bay State] did not do any in-depth study as to the incremental cost of switching customers.” (Tr. at 14).

Bay State claims that the fee is based, in part, on its experience during the Pilot Project.

However, when asked, in D.T.E. Information Request 1 – 18, to provide the information

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<sup>10</sup> Mr. Slate’s comment makes another point - that Bay State has a functional monopoly with regard to providing these services.

<sup>11</sup> See response to DOER Information Request 1 – 8, Attachment.

developed during the Pilot Project, Bay State could not do so. When asked for the basis of Bay State's conclusion that the \$ 10 fee deterred slamming, Bay State's response was, "Basic economic principles dictate that where there are costs, there is care." (Response to D.T.E. Information Request 1 – 18(b)). When asked at the hearing whether Bay State had observed any deterrent effect resulting from the imposition of the \$ 10 fee in the Pilot Program (which commenced in 1996) Mr. Slate testified that there was an observable decrease in slamming cases. (Tr. at 109). However, when asked by the Department if Bay State had performed any statistical analysis to support this conclusion, the witness testified that the conclusion was a "casual observation" from the Pilot Program. (Tr. at 110).

Bay State's response to D.T.E.'s Information Request 1-7 provides the number of slamming cases/year during the Pilot Project following the imposition of the \$ 10 fee: there were 96 in 1996, 16 in 1997, 31 in 1998, 4 in 1999, and 2 in 2000. The only conclusion that can be drawn from this information is that no correlation exists between the imposition of the fee and the number of slamming cases. When questioned directly by the Department, Bay State's witness agreed that no statistical correlation existed between the switching fee and slamming cases. (Tr. at 111).

Based upon the responses to the Information Requests and Record Requests, and the testimony of Bay State's witnesses, it is not possible to conclude that Bay State's proposed fees for any of these services are just and reasonable. The fees claimed to be incremental are unsupported by any data, analyses, or even company records. Further, the witnesses testified that the types of costs used to establish the proposed fees are already embedded in base rates.

At a minimum, it is impossible to discern to what extent these costs represent the “ebb and flow” of day-to-day operations, as distinct from unknown or unanticipated costs incremental to the test year cost of service approved by the Department in 1992. Bay State did no independent research to support its conclusions about the propriety or fairness of the proposed fees and provided inconsistent and incomplete information to the Department for every class of proposed fee.

The proposed fees to be billed to suppliers present a larger issue than merely the petition of one local distribution company. They represent a fundamental shift in the competitive market and will affect all market participants. A decision to impose such fees can not be based on historical anecdotes, conjecture, and claims of “corporate policy.” Accordingly, the Department should deny Bay State’s Petition.

### **B. Bay State’s Proposed Fees Are Inequitable**

Bay State claims that it is proposing these fees “in an effort to comply with the anticipated unbundling of the natural gas industry.” (BS Ex. 1 at 6). The Department has not yet initiated its own inquiry into the propriety or the competitive effect of supplier fees and no settlement has addressed this issue.

Given the current state of unbundling of the natural gas industry in Massachusetts, it appears that Bay State has a significant, competitive advantage over suppliers with respect to the fees and services at issue in this proceeding. If the proposed fees are approved, without the Department initiating a broader inquiry, suppliers will have no choice but to agree to Bay State’s terms, and pay these fees, or go elsewhere. The claim made by Bay State that the

imposition of these fees will “enhance customers’ and suppliers’ experience” is simply wrong. (BS Ex. 1 at 7).

Bay State is well aware of the advantage it can obtain over suppliers with the approval of these proposed fees, so much so that it would not directly respond to the Department’s inquiries on the topic. D.T.E. Information Request 1 – 11 asked if Bay State has a monopoly over the provision, installation, and maintenance of telemetering devices for its customers. Bay State’s response was that its devices must be used for certain administrative purposes. A review of Bay State’s Terms and Conditions, at 11.5.2, makes it express that, should a customer or a supplier request new telemetering equipment, Bay State SHALL provide, install, test, and maintain the equipment, the equipment SHALL become Bay State’s property, and the customer or supplier SHALL bear the costs. This is not the language of choice, but of mandate. Similarly, while Bay State claimed that customers and suppliers are not “precluded” from measuring usage via other means (than Bay State’s equipment) the information obtained would have no bearing or effect upon quantified usage, billing, daily imbalances, etc.

Similarly, DOER Information Request 1 – 4 asked whether Bay State was the only source of customer billing information. Bay State responded that suppliers were not “precluded from collecting this information via other means.” However, when asked at the hearing about a supplier’s ability to obtain this information elsewhere, Mr. Slate testified that the LDC was the only source of this information. (Tr. at 114).

DOER does not discount the importance of providing equitable compensation for actual costs incurred, nor does it minimize the need to assure that the correct parties are paying for services provided. However, such assurances do not flow from a circumstance where one party is completely at an advantage over another. Bay State's proposed fees, if approved, will result in just that.

**C. Bay State's Proposed Fees Should Be Considered in a Base Rate Proceeding**

Bay State asserts that the purpose of its Petition is "to ensure that incremental costs are appropriately borne by the beneficiaries of those services without discouraging market participation." (BS Ex. 1 at 2). Bay State does not claim a need for interim rate relief or a financial crisis necessitating the Department's review of one small, finite set of operational costs outside of a rate proceeding. Notwithstanding, Bay State's Petition appears to ignore the Department's proscription against single-issue rate cases by seeking rate relief for "incremental ongoing costs for our new service;" (Tr. at 57). Bay State's witness, Mr. Slate, also characterized the costs incurred so insignificant as to not cause a discernible effect up through the fourth decimal place in rates. (Tr. at 63).

Based upon the evidence presented at the hearing, there is no basis to support bringing this Petition as a single-issue rate case, about which the Department takes a dim view, because of the narrow focus and distorting effect on costs and income:

Single issue rate cases are frowned upon in utility ratemaking because the objective of ratemaking is not to ensure recovery dollar for dollar of every expenditure made by a utility, but rather to ensure that the company has a reasonable opportunity to earn a reasonable overall return on investments dedicated to public utility functions. In order to

make this ultimate determination, it is necessary to match ordinary and necessary expenses with income from the same period, and determine whether the next income is sufficient to provide a reasonable return on allowable rate base. Single-issue rate cases do not allow for this determination of overall net income. They focus on the change in a single expense (or revenue) item since the last rate case, ignoring completely what changes may have taken place in the other factors of net income. *Connecticut Valley Electric Company, Inc.*, DE 01-224, NHPUC Order No. 23,887 (December 31, 2001).

Bay State's Petition exemplifies the danger with single-issue rate cases; it focuses on the change in a single item since the last rate case, while ignoring completely what other changes may have taken place in net income:

Whether a company has over or underearned must be determined in the context of all of its costs and revenues and can not be assessed outside of a full and contemporary cost of service study. The Department has repeatedly rejected attempts to adjust rates for a single issue. *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, citing *Mass-American Water Co.*, D.P.U. 95-118 (1995); *Fitchburg Gas and Electric Light Co.*, D.T.E. 97-115/98-120 (1999).

The Department has also considered the question of charging fees to suppliers, in the context of *Competitive Market Initiatives*, D.T.E. 01-54-A, at 24. Speaking to the issue of local distribution companies' recovery of costs associated with compiling customer information, the Department stated:

Although we recognize that distribution companies incur certain costs associated with compiling, maintaining, and distributing these Lists, the distribution company is the custodian of the customer's data. As such, the dissemination of Customer Information Lists is a service that can only be provided by the distribution companies.<sup>16</sup> Making the Customer Information Lists available is a service that provides benefits to all of the distribution companies' customers. Wherefore, the Department directs the distribution companies to make the Customer Information Lists available at no cost to suppliers.



Footnote 16 – A base rate case proceeding pursuant to G.L. c. 164 § 94 would be a more appropriate venue to investigate the recovery of these costs.

DOER concurs with the Department's observation in D.T.E. 01-54-A and recommends that the Department denies the Petition and reserve the issue for consideration within the context of a base rate proceeding.

#### **IV. CONCLUSION**

In light of the evidence presented in this case and for the reasons set forth above, DOER requests that the Department:

- (1) deny the Petition and direct Bay State to reserve the issue for consideration by the Department in its next base rate proceeding, or
- (2) initiate a Generic Inquiry on Its Own Motion into the Propriety of Charging Supplier Fees and consider Bay State's Petition within the context of that Generic Inquiry.

Respectfully submitted,

Carol R. Wasserman  
Deputy General Counsel  
Massachusetts Division of Energy Resources